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EXAMINER

DOUYON, LORNA M

ART UNIT

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/604,780	<b>Applicant(s)</b> WILLIAMS ET AL.	
	<b>Examiner</b> Lorna M. Douyon	<b>Art Unit</b> 1796	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 10 January 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-49, 51, 52, 54-59, 87-113 and 115 is/are pending in the application.
- 4a) Of the above claim(s) 1-48, 87-93 and 100-113 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 49, 51-52, 54-59, 94-99, 115 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

1. This action is responsive to the amendment filed on January 10, 2008.
2. Claims 1-49, 51-52, 54-59, 87-113 and 115 are pending. Claims 50, 53, 60-86 and 114 have been cancelled. Claims 1-48, 87-93 and 100-113 are withdrawn from consideration as being drawn to non-elected claims. Claim 115 is newly added.
3. Claims 49, 51, 52, 54, 96-98 and 115 are rejected under 35 U.S.C. 103(a) as being unpatentable over Seglin et al. (US Patent No. 3,488,287), hereinafter "Seglin" for the reasons set forth in the previous office action and which is repeated below.

Seglin teaches dispensers and peroxide-soap compositions which are used to produce warm lather (see col. 1, lines 27-29; 62-63). Although the warm lather is used as a shaving lather, it could also be used to provide other types of warm lathers such as warm shampoo lathers (see col. 2, lines 10-15). Different dispensers such as those shown in Figures 1-4 can be used (see Figures 1-4). In Figure 1, the peroxide storage reservoir 6, peroxide measuring chamber 7 and other parts of the dispenser which are in contact with hydrogen peroxide should be constructed of materials which do not cause decomposition of hydrogen peroxide, and suitable materials include plastic, plastic coated metal, stainless steel and aluminum (see col. 2, line 69 to col. 3, line 3). Rather than a piston arrangement as in Figure 2, an aerosol-type dispenser in which plunger 20 activates suitable pressure release valves could be employed, and in this case the peroxide and soap components will contain a nominal amount of a low boiling inert propellant such as a chlorofluorocarbon (see col. 4, lines 4-10). A dispenser as in

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Figure 3 could also be an aerosol-type container having a pressure release valve (see col. 4, lines 20-42). Peroxide-soap compositions which are suitable for use in embodiment of Figure 3 are those which comprise about 5-30% by weight non-ionic detergent, about 30-94% water (which is understood to be deionized), and about 1-25% hydrogen peroxide (100%) (see col. 4, line 75 to col. 5, line 4), and may also contain other ingredients including 0-15% by weight of polyol humectants (which may read on anti-soil protectants) such as ethylene glycol, diethylene glycol; thickening agents (which reads on stabilizer), skin soothers and perfumes (see col. 5, lines 28-45). The density of the lather can be further varied in a number of ways, and it can be decreased by adding an inert propellant such as trichlorofluoromethane thereby increasing the volume of gases available for lathering (see col. 7, lines 8-26). Seglin, however, fails to specifically disclose a peroxide-soap composition in an aerosol-type dispenser wherein the inner surface is made of uncoated aluminum.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to prepare an aerosol-type dispenser containing peroxide-soap composition in a dispenser made of aluminum because Seglin teaches in col. 2, line 69 to col. 3, line 3 that the parts of the dispenser which are in contact with hydrogen peroxide should be constructed of materials which do not cause decomposition of hydrogen peroxide, and one suitable material includes aluminum.

4. Claims 55-56 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Seglin as applied to the above claims, and further in view of Hart et al. (US Patent No.

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3,970,584), hereinafter "Hart" for the reasons set forth in the previous office action and which is repeated below.

Seglin teaches the features as described above. However, Seglin fails to specifically disclose a dip tube being made of a thermoplastic material such as an olefin polymer.

Hart teaches a similar package wherein the dip tube is made from polyethylene (see col. 5, line 38).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have utilized a dip tube made from polyethylene because it is shown from Hart that dip tubes of said material is common in a similar package.

5. Claim 57 stands rejected under 35 U.S.C. 103(a) as being unpatentable over Seglin as applied to the above claims, and further in view of Miles (US Patent 3,722,753) for the reasons set forth in the previous office action and which is repeated below.

Seglin teaches the features as described above. However, Seglin fails to specifically disclose the valve made of nylon.

Miles teaches a similar package wherein the valve is made of nylon (see col. 3, lines 65-67).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have utilized a valve made of nylon in the container of Seglin because it is shown by Miles that said material is useful as a valve in a similar package.

6. Claims 58-59 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Seglin and Miles as applied to claim 57 above, and further in view of Barger et al. (US Patent No. 5,421,492), hereinafter "Barger '492" for the reasons set forth in the previous office action and which is repeated below.

Seglin and Miles teach the features as described above. However, the combination of reference fails to specifically disclose the valve containing a spring that is made from stainless steel and the diameter of the orifice.

Barger '492 teaches a similar package wherein the valve containing a spring is made of stainless steel (see col. 5, lines 34-50), and a dispensing passage 19 (see Figures 3 and 4).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have utilized a spring made of stainless steel in the container of Seglin and Miles because, not only is a stainless steel spring in the valve a common material used in similar package as shown by Barger '492, but also, said material is resistant to corrosion. With respect to the diameter of the dispensing passage, it would have been obvious to one of ordinary skill in the art at the time the invention was made to optimize the diameter of the orifice through routine experimentation for best results. As to optimization results, a patent will not be granted based upon the optimization of result effective variables when the optimization is obtained through routine experimentation unless there is a showing of unexpected results which properly rebuts the *prima facie* case of obviousness. See *In re Boesch*, 617 F.2d 272,276,205 USPQ

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215,219 (CCPA 1980). See also *In re Woodruff* 919 F.2d 1575, 1578, 16 USPQ2d 1934, 1936-37 (Fed. Cir. 1990), and *In re Aller*, 220 F.2d 454,456,105 USPQ 233,235 (CCPA 1955).

7. Claim 94 stands rejected under 35 U.S.C. 103(a) as being unpatentable over Seglin and Hart as applied to claim 55 above, and further in view of Barger et al. (US Patent No. 5,921,447), hereinafter "Barger '447" for the reasons set forth in the previous office action and which is repeated below.

Seglin and Hart teach the features as described above. However, the combination of reference fails to specifically disclose the gasket made of ethylene propylene diene terpolymer.

Barger '447 teaches a similar package wherein the gasket is made of ethylene propylene diene (see col. 10, lines 46-48).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have utilized a gasket made of ethylene propylene diene terpolymer in the container of Seglin and Hart because it is shown by Barger '447 that said material is useful as a gasket in a similar package.

8. Claim 95 stands rejected under 35 U.S.C. 103(a) as being unpatentable over Seglin as applied to the above claims, and further in view of Spitzer et al. (US Patent No. 3,970,219), hereinafter "Spitzer" for the reasons set forth in the previous office action and which is repeated below.

Seglin teaches the features as described above. However, Seglin fails to specifically disclose a container made of anodized aluminum.

Spitzer teaches a similar package wherein the container is made of anodized aluminum (see col. 6, lines 21-24).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have utilized a container made of anodized aluminum because it is shown from Spitzer that containers of said material is common in a similar package.

9. Claim 99 stands rejected under 35 U.S.C. 103(a) as being unpatentable over Seglin as applied to the above claims, and further in view of Lauwers et al. (US Patent No. 6,021,926), hereinafter "Lauwers" for the reasons set forth in the previous office action and which is repeated below.

Seglin teaches the features as described above. Seglin, however, fail to disclose the pressure of the chamber.

Lauwers, an analogous art, teaches an aerosol package wherein the pressure inside the container created by the gaseous propellant is preferably at least 5 bar (72.5 psi) at 20°C (see col. 6, lines 32-54).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to reasonably expect the pressure inside the container of Seglin to be at least 5 bar or 72.5 psi because it is known from Lauwers that similar aerosol package provide a pressure as those recited.



### **Response to Arguments**

10. Applicants' arguments filed January 10, 2008 have been fully considered but they are not persuasive.

With respect to the rejection based upon Seglin, Applicants argue that: "*Seglin et al. ' 287 does not disclose a pressure chamber having a dispensing spray outlet for dispensing controlled amounts of a peroxide composition under pressure from the pressure chamber onto a surface to be cleaned. Further, Seglin et al. ' 287 does not disclose a propellant mixed with the peroxide composition to pressurize the oxidizing composition within a pressure chamber to a level sufficient to spray the peroxide compound onto a surface to be cleaned. Although Seglin et al. ' 287 discloses that an aerosol type of dispenser can be used to dispense a peroxide composition and a "nominal amount of low boiling point propellant" can be used, the peroxide composition in the Seglin et al. ' 287 patent is not dispensed thorough a spray nozzle under pressure but rather is dispensed into a reaction chamber under very low pressure where it reacts with a catalyst to produce foam which then dispensed as a lather. This process does not result in spraying a peroxide composition onto a surface to be cleaned. The peroxide composition is decomposed before it is dispensed from the dispenser and it is not dispensed in any case under pressure onto a surface to be cleaned. It is the gas that forms during the reaction with the hydrogen peroxide that forces the lather through a dispensing opening which is not a dispensing spray outlet. In Applicants invention, the*

*peroxide composition is sprayed through a dispensing spray outlet onto a surface to be cleaned."*

The Examiner respectfully disagrees with the above arguments because it is clear that Seglin teaches other arrangements for exerting pressure on the reservoirs such as an aerosol-type dispenser or container having a nominal amount of a low boiling inert propellant such as a chlorofluorocarbon in col. 4, lines 3-10 and 20-42. Inasmuch as Seglin teaches an aerosol dispenser, propellant and peroxide composition, the mixture of the propellant and hydrogen peroxide should reasonably pressurize the peroxide composition to a level sufficient to spray the peroxide composition onto a surface to be cleaned as required in the present claims. In addition, the said phrase above, i.e. "to pressurize the peroxide composition to a level sufficient to spray the peroxide composition onto a surface to be cleaned" is an intended function, which function flows from the aerosol dispenser of Seglin.

Applicants also argue that: "*although Seglin et al. ' 287 incidentally discloses that the peroxide composition can be packaged in an aluminum container, there is no example or other disclosure of packaging the peroxide composition in a bare aluminum container. Typically, aluminum aerosol containers are coated with a coating, which Applicant has found causes serious problems with a peroxide composition. It is therefore believed that the incidental disclosure of the use of an aluminum container for hydrogen peroxide composition does not meet the limitation of claim 49 with respect to the inner surface of the pressure chamber formed wholly from uncoated aluminum. Furthermore, the concentration of peroxide in the hydrogen peroxide component of the*

*two ingredients of the warm lather composition is much too high to be packaged in a bare aluminum container. Concentrations of hydrogen peroxide in aerosol compositions above 10% are not safe in any aerosol container. The concentrations of hydrogen peroxide in the Seglin et al. ' 287 hydrogen peroxide component are far higher, preferably about 83%."*

The Examiner respectfully disagrees with the above arguments because the suitable materials for the dispenser which are in contact with hydrogen peroxide as taught by Seglin include aluminum (see col. 2, line 69 to col. 3, line 3) and this is construed to read on uncoated aluminum. With respect to the proportions of hydrogen peroxide in the peroxide-soap composition, Seglin teaches, in col. 5, lines 3-9, an amount from about 1-25%, preferably about 5-12% by weight. Hence, Seglin teaches the required amount of hydrogen peroxide in the composition.

With respect to the remaining rejections of the dependent claims based upon Seglin in view of Hart, Miles, Miles and Barger '492, Hart and Barger'447, Spitzer or Lauwers, Applicants argue that the alleged combination each of the secondary references with Seglin does not meet the deficiencies of Seglin as set forth above with respect to claim 49.

The responses to Seglin above apply here as well.

### **Conclusion**

11. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lorna M. Douyon whose telephone number is 571-272-1313. The examiner can normally be reached on Mondays-Fridays 8:00AM-4:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon can be reached on 571-272-1498. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Lorna M. Douyon/  
Primary Examiner  
Art Unit 1796